application is founded upon section 3(1)(i) of the Bankruptcy Ordinance of the Straits Settlements (Cap. 45). That sub-section reproduces section 4(1)(g) of the Bankruptcy Act, 1883, Cap. 52 of the English enactments. Each of these sub-sections makes provision only in respect of final judgments. The bankruptcy law of England is now governed by the Bankruptcy Acts 1914 and 1916, sub-section 1(i)(g) of which relate to final orders as well as final judgments. The Straits Settlements Bankruptcy Ordinance was not amended so as to conform with the English Acts. An order for payment of costs is not a final judgment, and therefore, it appears to this Court that this application, not being founded upon a final judgment, cannot succeed.

The Application is, therefore, dismissed. I make no order as to costs.

Application dismissed.

ONG SEAH THOR v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.)
November 8, 1951]

[Singapore — Magistrate's Appeal No. 120 of 1951]

Minor Offences Ordinance (Cap. 24), s. 34(1) — Meaning of 'fails to account satisfactorily' discussed.

In this case the Magistrate found that the circumstances in which the goods were found gave rise to a suspicion that the goods in question were being illegally imported.

Held, that this was not enough to justify conviction under section 34(1). Conviction quashed.

Section 34(1) discussed.

Cases referred to:—

(1) *Hadley v. Parks* (1866) 14 L.T. (N.S.) 325.

(2) *Queen-Empress v. Dhanjibhai* (1895) I.L.R. 20 Bombay 348.

MAGISTATE'S APPEAL.

S. H. D. Elias for the appellant.

A. D. Farell (Crown Counsel) for the Crown.

Murray-Aynsley, C.J.: — This appeal arose out of a conviction under section 34(1) of Cap. 24, the Minor Offences Ordinance.

The sub-section reads as follows:—

"Any person who has in his possession or conveys in any manner anything which may be reasonably suspected of being stolen or fraudulently obtained shall, if he fails to account satisfactorily how he came by the same, be liable to a fine not exceeding fifty dollars, or to imprisonment of either description for a term which may extend to three months."

This provision is obviously based on section 24 of the Metropolitan Police Courts Act, 2 & 3 Vict., Cap. 71. This reads as follows:—

"That any person who shall be brought before any of the said Magistrates charged with having in his possession, or conveying in any manner, anything which may be reasonably suspected of being stolen or unlawfully obtained, and who shall not give an account to the satisfaction of such Magistrate how he came by the same, shall be deemed guilty etc., etc."

It appears that the version in force in the Colony was copied from the Indian Act XIII of 1856, section 35. There should be noted two differences between the English provision and that in question, viz. one says "unlawfully", the other "fraudulently"; and also the English version provides that the explanation shall be to the Magistrate, whilst the local Ordinance is silent on this point.

In either case the provision is of a very extraordinary character and anomalous when compared with the norm of English Criminal law and procedure.

I have only been able to find one English case which interprets the provision. That is the case of *Hadley v. Parks*[1]. That case very materially restricted the scope of the provision by linking it with section 66 of 2 & 3 Vict. c. 47, the Metropolis Police Act, which gave power to constables to search "any vessel, boat, cart or carriage in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found," and also "any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained etc. etc." The Court appears to have been impressed by the "very extensive and arbitrary power" conferred by the sections in question and to have assumed that they were intended to deal with the situation that arose at a time before the invention of the electric telegraph and at a time when railways were uncommon and the difficulty of communication made it impossible for the police to obtain information about thefts committed out of the immediate neighbourhood. Whether there is any justification for the anomaly at the present time in this Colony is a question for the legislature.

The sub-section under consideration gives rise to difficulties of three kinds. There are firstly questions which arise out of the alleged possession. In the present case the Magistrate found that the circumstances in which the goods were found gave rise to a suspicion that the goods in question were being illegally imported. This is, of course, not enough to justify a conviction under the sub-section and I, therefore, quashed the conviction.

I was asked at the hearing, in view of the numerous conflicting views which have been expressed with regard to other questions which arise under the sub-section, to express my views upon the interpretation of the sub-section generally.

Other difficulties have arisen upon the question of the explanation expected of the accused and of its effect when given.

It has been seen that the English Act required the explanation to be given to the Magistrate, presumably at the trial. This was, of course, especially at a time when accused persons could not normally give evidence. In the form in which the provision has been adapted in India and in this Colony it seems to have been assumed that the explanation must be given to the person who finds the goods in the possession of the accused, not necessarily a policeman; (see the Indian case of *Queen-Empress v. Dhanjibhai*[2]). In India accused persons still cannot give evidence. Further, to call for an explanation from an accused person would not be in accord with the provisions of the Criminal Procedure Code. If this tacit assumption is correct (I have not found a case where the matter was considered judicially), it must be a question of a statement made at or about the time that the goods were found in possession of the accused. If, as is usually the case, such a statement, if made, is made to a police officer it will frequently, unless it is taken to be an exception to the general rule, or even generally, be excluded by the provisions of the Evidence Ordinance or of the Criminal Procedure Code. If it is not taken as being an exception to the general rule an impossible situation arises. The Court cannot decide that the accused has not given a satisfactorily account of how he came by the goods when there is a possibility that he made an explanation which could not be given in evidence. There have been conflicting decisions on the question whether or no the Minor Offences Ordinance creates an exception. I cannot sitting alone resolve the difficulty, though I incline to the view that the answer should be in the affirmative. There have also been conflicting views as to the scope of section 124 of the Criminal Procedure Code. As I have said, I do not think this of decisive importance. The difficulty arises from the mere possibility of an inadmissible statement having been made. If the general assumption that the explanation should not be made to a Magistrate is correct, it seems very doubtful whether the sub-section can be used in any but exceptional cases. It is to be hoped that the sub-section will, if it is to be retained, be redrafted in the near future.

Conviction quashed.

In re ESTATE OF LEE SIEW KOW, DECD.; GAN ENG NEO (w) and 2 ORS. v. YEO SIEW NEO (w).

[Orig. Civ. Juris. (Murray-Aynsley, C.J.)
November 9, 1951]

[Singapore — Probate No. 352 of 1951]

Rules of the Supreme Court, O. 54, r. 20(2)(c) — Practice — Particulars — Further and better — Refusal to give — Pleadings — "Material facts" in — Meaning of.

The plaintiffs petitioned for Letters of Administration to the Estate of Lee Siew Kow deceased to which the defendant, who claimed to be a secondary wife, entered a Caveat. The claim was contested and it was ordered that the matter proceed as an action under Order 54 Rule 20(2)(c). The relevant paragraph of the Defence is set out in the Judgment.

The plaintiffs applied by letter for further and better particulars of "the co-habitation" and of "the friends and relatives" by whom recognition was alleged to have been accorded. These were refused on the grounds that it was a matter of evidence and would also entail the disclosure of the names of the defendant's witnesses.

The plaintiffs took out a Summons in Chambers for delivery of further and better particulars within 7 days of the Order to be made thereon. These particulars are also fully set out in the Judgment.

The plaintiffs further asked for an order that in default of delivery of these particulars paragraph 2 of the Defence be struck out and for the costs of the application.

The hearing of the Summons was adjourned into Open Court before the Honourable the Chief Justice who made an order in terms of the Summons in Chambers.

Cited for the plaintiffs: *Odgers* on Pleadings & Practice 13th ed. pp. 135, 136, 139; *Lew Ah Lui v. Choa Eng Wan* (1935) S.S.L.R. 166; (1935) M.L.J. 78; *Philipps v. Philipps* 4 Q.B.D. 127; *Palmer v. Palmer* (1892) 1 Q.B. 319; *Mariott v. Chamberlin* 17 Q.B.D. 154, 161; *Bishop v. Bishop* (1901) P. 326.

Cited for the defendant: *Hooton v. Dalvey* (1907) 2 K.B. 18; *Nash v. Layton* (1911) 2 Ch. 71; *Wooton v. Siever* (1913) 3 K.B. 499; *Mariott v. Chamberlin* 17 Q.B.D. 154, 161, 162.

Case referred to:—

(1) *Philipps v. Philipps* 4 Q.B.D. p. 139.

APPLICATION for further and better particulars.

R. H. Green for the plaintiffs-petitioners.

Osborne Jones for the defendant-caveatrix.

Cur. Adv. Vult.

Murray-Aynsley, C.J. : — This application for further and better particulars arises out of proceedings in which the plaintiffs seek to obtain Letters of